LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 4 1971
E. ROBERT SEAVER, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No. 1193

JOHN LANE,

Appellant

v.

THE STATE OF TEXAS,

Appellee

ON APPEAL FROM COUNTY COURT AT LAW NO. 1
TRAVIS COUNTY, TEXAS

JURISDICTIONAL STATEMENT

SAM HOUSTON CLINTON, JR.
Attorney for Appellant
[illegible] Texas AFL-CIO Building
[illegible] West 11th Street
Austin, Texas 78701

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No. _____

JOHN LANE,

Appellant

v.

THE STATE OF TEXAS,

Appellee

ON APPEAL FROM COUNTY COURT AT LAW NO. 1
TRAVIS COUNTY, TEXAS

JURISDICTIONAL STATEMENT

This is an appeal from a conviction for "disorderly conduct" in the County Court at Law No. 1, Travis County, Texas, which rejected pre-trial and post-conviction challenges to constitutionality of the statute upon which prosecution was based. This jurisdictional statement is submitted pursuant to Rule 15 of the Rules of the Supreme Court to demonstrate that the Supreme Court has jurisdiction of this appeal and that substantial federal questions are presented.

OPINIONS BELOW

The trial court, although a state court of record, usually does not and in this case did not dcliver an opinion. However, before trial it did deny a Motion to Quash Complaint and after conviction it did deny a Motion for New Trial and a Motion in Arrest of Judgment. None of the rulings of the Court is reported, officially or unofficially. A copy of Order Overruling Motion for New Trial and Sentence and Motion in Arrest of Judgment and Order are appended hereto as Appendix A and B respectively.

JURISDICTION

This is a proceeding brought by the State of Texas against Appellant under its Code of Criminal Procedure. The proceeding was initiated in a Justice Court by a complaint charging Appellant with "disorderly conduct" proscribed by Article 474, Section 1(5), Vernon's Annotated Penal Code of Texas. Upon conviction Appellant duly and properly appealed to County Court at Law No. 1, Travis County, Texas, for trial de novo. There by Motion to Quash Complaint he drew in question the validity of Article 474, Section 1(5) on grounds of its being repugnant to the Constitution of the United States. The motion was denied and upon trial without a jury he was convicted. He timely filed a Motion for New Trial and before sentence was pronounced presented his Motion in Arrest of Judgment asserting again constitutional grounds. Motion for New Trial and Motion in Arrest of Judgment were denied October 9, 1970, and a fine of $100.00 was imposed. Notice of Appeal to the Supreme Court of the United States was filed in County Court at Law No. 1 and served on an Assistant County Attorney of Travis County October 9, 1970.

Jurisdiction of this appeal is conferred in the Supreme Court by 28 U.S.C. Sec. 1257(2), the County Court at Law No. 1 being the highest court in the state judicial system in which a decision could be had under the Constitution and laws of the

State of Texas; Article 4.03, Vernon's Annotated Code of Criminal Procedure of Texas. The following cases sustain the jurisdiction of this Court of the appeal in this case: *Powell v. Texas*, 392 U.S. 514, 88 S. Ct. 2145, 20 L. Ed. 2d 1254 (1968); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 83 S. Ct. 631, 9 L. Ed. 2d 584, footnote 3 (1963).

STATUTE INVOLVED

Provisions of Article 474, 1 Vernon's Annotated Penal Code of Texas, 1970-1971 pocket part, p. 125, basing the complaint on which Appellant was convicted are as follows:

"Art. 474. Disorderly Conduct.

Section 1. No person, acting alone or in concert with others, may engage in disorderly conduct. Disorderly conduct consists of any of the following:

(1) * *
(2) * *
(3) * *
(4) * *
(5) In a public or private place engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance; . . ."

QUESTIONS PRESENTED

1. Whether Article 474, Sec. 1(5) is void for vagueness and overbreadth and, failing to exclude constitutionally protected activities, has a "chilling effect" on exercise of rights of expression, association and assembly guaranteed by the First Amendment to the United States Constitution.

2. Whether Article 474, Sec. 1(5) basing the complaint and the complaint are invalid for the reason that the terms "boisterous" and "unreasonably loud" are impermissibly vague and overly broad.

3. Whether Article 474, Sec. 1(5) basing the complaint and the complaint are invalid for the reason that the terms "under circumstances in which such conduct tended to cause a disturbance" are impermissibly vague and overly broad.

STATEMENT OF THE CASE

April 17, 1970, a security officer employed by the University of Texas at Austin filed a complaint with a Justice of the Peace alleging that Appellant did on the same day engage in disorderly conduct and after being convicted there Appellant appealed to County Court at Law No. 1 where he was entitled to and was granted a trial de novo on the same complaint. The complaint alleged that Appellant "acting alone" did "unlawfully engage in disorderly conduct, to wit: by being in a public place, to wit: the University of Texas at Austin Board of Regents meeting room, and engaging in boisterous and unreasonably loud conduct under circumstances in which such conduct tended to cause a disturbance."

Before trial in County Court Appellant raised federal questions sought to be reviewed in a Motion to Quash the Complaint by which he contended that

1. Article 474, Section 1(5) is void for vagueness and overbreadth;

2. Article 474, Section 1(5) and the complaint are invalid because the terms "boisterous" and "unreasonably loud conduct" are impermissibly vague and overly broad; and

3. Article 474, Section 1(5) and the complaint are invalid because the phrase "under circumstances in which such conduct tended to cause a disturbance" is impermissibly vague and overly broad.

Motion to Quash was denied, to which ruling of the Court Appellant did object and except (as shown in second paragraph of Agreed Statement).

Upon trial the Court found Appellant guilty and thereafter overruled a Motion for New Trial; before sentence was pronounced, however, as permitted by Texas practice,

Appellant renewed all federal questions sought to be reviewed by his Motion in Arrest of Judgment, in which he reurged the three contentions set forth above along with other constitutional grounds. By written order grounds stated in Motion in Arrest of Judgment were found to be "without merit" and it was denied.

Notice of Appeal followed; in it all grounds previously raised are set forth.

FEDERAL QUESTIONS ARE SUBSTANTIAL

The questions presented are so substantial as to require plenary consideration because the rulings of the trial court in favor of validity of statutory provisions in question conflict with opinions of the Supreme Court and other appellate courts and thereby uphold statutory provisions which impinge and deny significant First Amendment guarantees; moreover, under rather peculiar limitations in the Texas judicial system the only effective recourse available to Appellant – and doubtless to hundreds of other citizens in Texas similarly situated – is to the Supreme Court of the United States, there being no other authoritative precedential forum to address itself to the serious constitutional questions raised by the use of "disorderly conduct" provisions now in vogue.

The present Article 474, especially Section 1(5) is a revised version of a predecessor Article 474, 1 Vernon's Annotated Penal Code. The latter was declared invalid by a three judge federal court in *University Committee to End the War in Viet Nam,* et al. 289 F. Supp. 469 (D.C., W.D. of Tex., 1968), appeal sub. nom. *Gunn v. University Committee to End the War in Viet Nam* dismissed, U.S. 90 S. Ct. 2013 (1970). As pertinent here the earlier version of Article 474 proscribed as "disturbing the peace" anyone who "shall go into or near any public place . . . and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek . . . in a manner calculated to disturb the person or

persons present at such place . . ."

In holding old Article 474 invalid, *Gunn* expressly and specifically condemned that part of the statute prohibiting use of "loud and vociferous . . . language . . . in a manner calculated to disturb the person or persons present." Although the holding in *Gunn* and other opinions overturning similar prohibitions was pointedly called to the attention of the trial court below in Motion to Quash Complaint and, thereafter again, in Motion to Arrest Judgment, the Court rejected such holdings and of necessity upheld almost identical provisions in the current Article 474 in convicting Appellant.

Just as proscriptions of old Article 474 against use of "loud and vociferous . . . language . . . in a manner calculated to disturb the person or persons present" did, that proscriptions of current Article 474, Section 1(5) against one who engages in "boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause . . . a disturbance" may, and does, "sweep unnecessarily broadly and thereby invade the area of protected freedoms" is so clear from authoritative decisions that argument seems frivolous. See, eg., *Cox v. Louisiana*, 379 U.S. 536, 85 S. Ct. 453 (1966); *Edwards v. South Carolina*, 372 U.S. 229, 83 S. Ct. 680 (1963); *Fields v. South Carolina*, 375 U.S. 44, 84 S. Ct. 149 (1964); *Cantwell v. Connecticut*, 310 U.S., 60 S. Ct. 900-905 (1940); see also *Brown v. Louisiana*, 383 U.S. 131, 86 S. Ct. 719 (1966); cf. *Thomas v. City of Danville*, 207 Va. 656, 152 S.E. 2d 265 (1967); *Hunter v. Allen*, 286 F. Supp. 830 (D. C., N. D. Ga., 1968) and *Landry v. Daley*, 280 F. Supp. 968 (D. C., Ill., 1969). First Amendment freedoms of expression, association and assembly may be boisterously and unreasonably loudly exercised yet still be protected, as they were held to be in *Cox*, *Edwards* and *Fields*, supra. For such freedoms are "protected against censorship or punishment, unless shown likely to produce a clear and present danger of serious substantive evil that rises far above *public inconvenience, annoyance*, or *unrest*," *Terminiello v. City of Chicago*, 337 U.S. 1, 69 S. Ct. 894 (1949).

The statutory language is also "void for vagueness." Just as *Gunn* held that the phrase "loud and vociferous . . . language . . . in a manner calculated to disturb" left to the executive and judicial branches "too wide a discretion in the application of the law," relying on "calculations as to the boiling point of a particular person or a particular group, not an appraisal of the nature of the comments per se," so also the current phraseology. "Boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which such conduct tends to cause . . . a disturbance" is practically synonymous with the offensive phrase condemned in *Gunn*. Moreover, similar provisions have been subject to judicial scrutiny and criticism in *Cantwell v. Connecticut*, 310 U.S. 296, 308, 60 S. Ct. 900, 905 (1940); *Ashton v. Kentucky*, 384 U.S. 195, 200, 86 S. Ct. 1407, 1410 (1966); *Carmichael v. Allen*, 267 F. Supp. at 998-999; *Baker v. Bindner*, 274 F. Supp. 658, 662-663 (1967); *Thomas v. City of Danville*, 207 Va. 656, 152 S.E. 2d 265 (1967) in which the Supreme Court of Appeals of Virginia had no difficulty in striking down parts of a restraining order containing provisions strikingly similar to the statutory provisions under attack here, doing so on *Terminiello* grounds.

Thus Article 474, Section 1(5), fails to meet the test of standards laid down by decisions of the Supreme Court regarding "overbreadth" and "void of vagueness." The cases in which this Court has viewed breach of the peace or disorderly conduct regulations on their face reveal a consistent pattern. Just as the functional reasons for the vagueness and overbreadth doctrines would indicate, the cases reaffirm that there is something unique about breach of the peace and disturbing the peace regulations. Granting Appellant's Motion to Quash Complaint and thereby holding that Article 474, Section 1(5) is overbroad and vague would have merely followed the teachings of this Court and of other decisions to the same effect and would not have involved any doctrinal step beyond those which have already been taken; such a holding would not have required an invalidation of the whole breach of the peace or disorderly conduct concept. Rather, since the offending section is one of

the broadest disorderly conduct regulations still extant, favorable action by the trial court would have served to emphasize the importance and necessity of enacting a law "narrowly drawn to prevent the supposed evil," *Cantwell v. Connecticut,* supra, 310 U.S. at 307, 60 S. Ct. at 905. We submit that the vital interest of protecting exercise of First Amendment freedoms of expression, association and assembly mandates that the statutory provisions applied here be invalidated. To that end we urge that the imperative be recognized by this Court.

Jurisdiction is clear and for reasons stated the questions presented are so substantial and of importance as to require plenary consideration by this Court.

Respectfully submitted,

SAM HOUSTON CLINTON, JR.
205 Texas AFL-CIO Building
308 West 11th Street
Austin, Texas 78701
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Sam Houston Clinton, Jr., a member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Jurisdictional Statement has been personally served on counsel for Appellee by delivery to Honorable Ned Granger, County Attorney, Travis County Courthouse, Austin, Texas 78701, this day of December, 1970.

SAM HOUSTON CLINTON, JR.
Attorney for Appellant

APPENDIX A

NO. 119,462
IN THE COUNTY COURT OF TRAVIS COUNTY, TEXAS
COUNTY COURT AT LAW NO. ONE
THE STATE OF TEXAS V. JOHN LANE

ORDER OVERRULING MOTION FOR NEW TRIAL AND SENTENCE

This day came on to be heard and considered by the Court Defendant's Motion for New Trial heretofore filed in this cause, when came the State of Texas by her County Attorney of Travis County, Texas, and the Defendant in person and by and through his attorney and announced ready for said hearing; whereupon said motion was presented to the Court together with argument of counsel thereon and the Court, upon due consideration of same and being fully advised in the premises, is of the opinion and finds that said Motion is not well taken and should be in all things overruled and denied; it is therefore

ORDERED by the Court that Defendant's Motion for New Trial be and the same is hereby in all things overruled and denied.

And the Defendant being present in person before the Court for the purpose of having sentence pronounced against him in accordance with the judgment of the Court heretofore rendered in said cause, pursuant to Article 42.07, C.C.P., being asked whether he had anything to say why sentence should not be pronounced against him, presented to the Court his Motion in Arrest of Judgment which, upon presentation of said Motion together with the argument of counsel thereon and after due consideration of same, was by the Court in all things overruled and denied by separate order appended to said Motion; whereupon the Court proceeded to pronounce sentence in the presence of said Defendant as follows:

It is the order of this Court that the said Defendant, John Lane, who has been adjudged guilty of the offense of disorderly conduct, be and he is hereby sentenced to pay a fine in the sum of $100.00 and costs; it is therefore

ORDERED that the State of Texas do have and recover of and from the Defendant the said fine of $100.00 and all costs of this prosecution; commitment is ordered issued and the Defendant is remanded to the custody of the Sheriff of Travis County, who will commit him forthwith to the jail of said County until said fine and costs are fully paid or otherwise discharged; and it is further

ORDERED that execution may issue against the property of said Defendant for the amount of said fine and costs.

Whereupon Defendant did object and except to the rulings and action

of the Court and orally gave notice of appeal to the Supreme Court of the United States and the Court thereupon fixed the amount of bond on such appeal in the amount of $200.00 and approved a bond tendered by Defendant in that amount: it is therefore

FURTHER ORDERED that issuance of commitment and execution be and they are hereby stayed for a period of ninety days from this date for Defendant to perfect his appeal to the Supreme Court of the United States and, upon such appeal being perfected, further stayed pending until final action thereon by the Supreme Court of the United States and, upon such appeal being perfected, further stayed pending until final action thereon by the Supreme Court of the United States.

Signed and ordered entered this 9 day of October, 1970.

JERRY DELLANA, JUDGE
County Court at Law No. One
Travis County, Texas

APPENDIX B

NO. 119,462

IN THE COUNTY COURT OF TRAVIS COUNTY, TEXAS
COUNTY COURT AT LAW NO. ONE
THE STATE OF TEXAS V. JOHN LANE

MOTION IN ARREST OF JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

JOHN LANE, Defendant herein, pursuant to Article 42.07, para. 3, and Chapter 41, C.C.P., respectfully suggests to the Court that judgment has not been legally rendered against him for the following grounds:

1.

Article 474, Section 1(5) P.C., basing the complaint, and the complaint are void for vagueness and overbreadth and, failing to exclude constitutionally protected activities, has a "chilling effect" on exercise of rights of expression, association and assembly guaranteed by the First Amendment to the United States Constitution, *University Committee v. Gunn*, 289 F. Supp. 469 (D.C., W.D. Tex., 1968); cf. *Hunter v. Allen*, 286 F. Supp. 830 (D.C., N.D. Ga., 1968) and *Landry v. Daley*, 280 F. Supp. 968 (D.C., Ill., 1969); *Neal v. Still*, 455 S.W. 2d 921 (Ark., 1970).

2.

Article 474, Section 1(5) P.C. basing the complaint and the complaint are invalid for the reason that the terms "boisterous" and "unreasonably loud conduct" are impermissibly vague, general and indefinite, leaving to the executive and judicial branches too wide a discretion in their application, and are also overly broad.

3.

Article 474, Section 1(5), P.C., basing the complaint and the complaint are invalid for the reason that the terms "boisterous" and "unreasonably loud conduct" are impermissibly vague, general and indefinite, leaving to the executive and judicial branches too wide a discretion in their application, and are also overly broad.

3.

Article 474, Section 1(5), P.C., basing the complaint and the complaint are invalid for the reason that the terms "under circumstances in which such conduct tended to cause a disturbance" are impermissibly vague, general and indefinite, leaving to the executive and judicial branches too wide a discretion in their application, and are also overly broad.

4.

The complaint in this cause is invalid for the reason that the purported offense is not set forth in plain and intelligible words that are sufficiently specific to advise this presumptively innocent Defendant of the precise charge against him as required by applicable provisions of the Constitution of the United States and amendments thereto.

5.

Judgment has not been legally rendered against Defendant for the reason that the Court having denied Motion in Limine and therefore admitted into evidence testimony objected to in said Motion, the judgment of conviction may have rested upon acts committed by Defendant that are entitled to protection of the First Amendment contrary to the principle of *Stromberg v. California*, 283 U.S., 359, 51 S. Ct. 532, 75 L. Ed. 1117 (1931).

6.

Judgment has not been legally rendered against him for the reason that the judgment of conviction is so devoid of evidentiary support as to violate the due process clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, premises considered, Defendant respectfully prays that this motion be sustained and that, in accordance with Article 41.05, C.C.P., he be in all things discharged.

Sam Houston Clinton, Jr.
CLINTON & RICHARDS
Attorneys for Defendant
205 Texas AFL-CIO Bldg.
308 West 11th Street
Austin, Texas 78701

By affixing his signature to the above and foregoing Motion in Arrest of Judgment, Sam Houston Clinton, Jr. hereby certifies that a true and correct copy of same has been served upon Ned Granger, County Attorney, this 9 day of October, 1970.

ORDER

This day Motion in Arrest of Judgment having been timely presented to the Court in accordance with Article 42.07, C.C.P. and having been duly considered, the Court is of the opinion and finds that the grounds in said Motion are without merit and it should be denied; it is therefore

ORDERED by the Court that Motion in Arrest of Judgment be and the same is hereby in all things denied.

JERRY DELLANA, JUDGE
County Court at Law No. One
Travis County, Texas